IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3734 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGORI SHABBIR HUSSAIN @ BABLO HAYATKHAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for the Petitioner.

Mr.A.D. Oza, GOVERNMENT PLEADER,

for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 8.3.2004. By the impugned order, the petitioner-detenu is detained as a 'bootlegger', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu was

also served with the grounds of detention. In the grounds of detention, there is a reference about four pending criminal cases. All these cases are in connection with dealing in foreign liquor. All these cases are under the Bombay Prohibition Act.

The authority, after taking into consideration the aforesaid cases, and after recording the statements of two witnesses, whose names have not been disclosed to the petitioner, detained the petitioner under PASA. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner has submitted that there is a delay in deciding the representation. It is submitted that the petitioner made a representation to the detaining authority on 10th March, 2004, and the State Government decided the said representation on 24th March, 2004 and, therefore, there is a delay in deciding the representation submitted by the petitioner. Averment regarding delay in deciding the representation is taken in the petition. However, there is no reply filed by the State Government, explaining the delay. It is, however, orally submitted by the learned Government Pleader that the representation dated 10th March, 2004 was received by the detaining authority on 15th March, 2004 and the detaining authority forwarded the same to the State Government on 16th March, 2004. Thereafter, there is no further material with the State Government to show as to on which date the State Government received the representation. The delay is not explained by filing any reply. Since the averment has remained uncontroverted in this behalf for want of any reply, on the ground of delay in deciding the representation, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

At this stage the learned Advocate for the petitioner-detenu, submitted that the petitioner will not enter Mehsana City upto 31st October, 2004. This voluntary statement is recorded. It is for the authority to monitor the same.

17th August, 2004 (P.B. Majmudar, J.)

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(apj)